

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff and	)	
Counter-Defendant,	)	
vs.	)	Civ. Action No. 03 CV 11601 WGY
	)	
ATLAS TACK CORPORATION and	)	
M. LEONARD LEWIS,	)	
	)	
Defendants and	)	
Counter-Plaintiffs.	)	
	)	

ATLAS TACK CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civ. Action No. 01 CV 10501 WGY
	)	(lead case)
TOWN OF FAIRHAVEN,	)	
	)	
Defendant.	)	
	)	

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civ. Action No. 04 CV 11880 WGY
	)	
ATLAS TACK CORPORATION and	)	
M. LEONARD LEWIS,	)	
	)	
Defendants.	)	
	)	

**CONSENT DECREE**

## TABLE OF CONTENTS

I.	<u>BACKGROUND</u> .....	2
II.	<u>JURISDICTION</u> .....	5
III.	<u>PARTIES BOUND</u> .....	6
IV.	<u>DEFINITIONS</u> .....	6
V.	<u>STATEMENT OF PURPOSE</u> .....	14
VI.	<u>PAYMENT OF RESPONSE COSTS</u> .....	14
VII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u> .....	26
VIII.	<u>RELEASE OF NOTICE OF FEDERAL LIEN</u> .....	28
IX.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u> .....	29
X.	<u>RESERVATION OF RIGHTS</u> .....	30
XI.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS AND TOWN</u> ...	32
XII.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .....	34
XIII.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u> .....	35
XIV.	<u>ACCESS TO INFORMATION</u> .....	43
XV.	<u>MAINTENANCE OF PROPERTY</u> .....	44
XVI.	<u>RETENTION OF RECORDS</u> .....	45
XVII.	<u>CERTIFICATION</u> .....	45
XVIII.	<u>NOTICES AND SUBMISSIONS</u> .....	46
XIX.	<u>RETENTION OF JURISDICTION</u> .....	48
XX.	<u>INTEGRATION/APPENDICES</u> .....	49
XXI.	<u>MODIFICATION</u> .....	49
XXII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	50
XXIII.	<u>SIGNATORIES/SERVICE</u> .....	50
XXIV.	<u>FINAL JUDGMENT</u> .....	51

## **I. BACKGROUND**

WHEREAS, on March 31, 2001, the Atlas Tack Corporation ("Atlas") filed a complaint in Civil Action 01 CV 10501 WGY ("Contribution Action") against the Hathaway-Braleley Wharf Company, Inc. ("Hathaway-Braleley") and the Town of Fairhaven ("Town"), under Section 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f), seeking contribution for costs incurred by Atlas in connection with the Atlas Tack Corporation Superfund Site ("Site") located in Fairhaven, Massachusetts.

WHEREAS, on April 6, 2001, the Court approved a Stipulation in the Contribution Action whereby the matter was administratively closed, whereby the parties were to independently pursue settlement negotiations related to the Site with the United States Environmental Protection Agency ("EPA"), whereby Hathaway-Braleley was precluded from distributing certain assets except in connection with a settlement agreement with EPA, and whereby any party could restore the case to active status by notifying all other parties.

WHEREAS, on August 27, 2003, the United States of America ("United States"), on behalf of the Administrator of EPA, filed a complaint in Civil Action 03 CV 11601 (WGY) ("Government Action") pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), against Atlas and M. Leonard Lewis ("Lewis") (collectively "Settling Defendants"), seeking reimbursement of response costs incurred in connection with the release or threatened release of hazardous substances at the Site as well as a declaratory judgment that the Settling Defendants were liable for future response costs incurred in connection with the Site.

WHEREAS, on July 2, 2003, the United States and the Commonwealth of Massachusetts filed claims against Hathaway-Braleley in connection with the Site and simultaneously lodged with

the Court a consent decree that resolved those claims. See United States v. Hathaway-Brale Wharf Co., No. 03 CV 11259 WGY and Commonwealth v. Hathaway-Brale Wharf Co., No. 03 CV 11260 WGY.

WHEREAS, the Contribution Action was re-opened.

WHEREAS, on February 28, 2004, the Court approved the Hathaway-Brale consent decree and, on April 28, 2004, granted Hathaway-Brale's motion for summary judgment filed in the Contribution Action based on the contribution protection afforded by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

WHEREAS, on March 19, 2004, the Court consolidated the Government Action with the Contribution Action for purposes of discovery.

WHEREAS, on March 25, 2004, the Court entered a Joint Statement of the Parties in the Contribution Action which required the parties to be ready for trial on or after March 30, 2005.

WHEREAS, on April 7, 2004, the Court entered the Second Revised Joint Statement of the Parties in the Government Action which bifurcated the Government Action into two phases. Phase I was to involve issues related to liability (including divisibility) and Phase II was to involve issues related to costs and remedy. Trial for Phase I was scheduled for September, 2004 and for Phase II was scheduled for February, 2005.

WHEREAS, on April 21, 2004, Atlas filed a contribution counterclaim in the Government Action against the United States, under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), seeking reimbursement of costs incurred by Atlas in connection with the Site and alleging that the United States was liable at the Site as a result of the activities of the United States Army Corps of Engineers in connection with the hurricane dike running through the Site.

On May 4, 2004, Lewis filed a similar counterclaim.

WHEREAS, on July 20, 2004, Defendants filed a motion for a preliminary injunction in the Government Action seeking an order preliminary enjoining EPA from taking any action to demolish any of the buildings located on the Site until such time the litigation was completed.

WHEREAS, on September 15, 2004, the United States filed an opposition to the Defendants' motion for a preliminary injunction.

WHEREAS, on August 27, 2004, the United States filed an action against Atlas and Lewis, United States v. Atlas Tack Corp., No. 04-11880 WGY (D. Mass.), seeking an order in aid of access to the property owned by Atlas at the Site as well as civil penalties for the failure of Atlas and Lewis to provide access to the property in response to EPA's August 2, 2004 letter request seeking access to the property as well as EPA's August 18, 2004 Administrative Order seeking access to the property.

WHEREAS, on September 23, 2004, the Court granted the United States's motion seeking immediate access to the Property on certain terms set forth by the Court.

WHEREAS, on October 27 and 28, 2004, the Phase I trial in the Government Action began. At that time, the Court indicated that the remainder of the trial would continue at a later time. Before the Phase I trial recommenced, the parties to both the Government Action and the Contribution Action reached an agreement in principle to settle both actions.

WHEREAS, the Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint and the Town and the United States do not admit any liability arising out of the transactions or occurrences alleged in the contribution claims asserted by the Settling Defendants.

WHEREAS, the United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site and, based upon this Financial Information, the United States has determined that Settling Defendants do not have the ability to reimburse the United States for all of its response costs incurred and expected to be incurred at the Site.

WHEREAS, the Parties have entered into this settlement based on their evaluation of one or more of the following issues: ability to pay, litigation risk, the costs of litigation, and the other benefits of settlement as opposed to continued litigation.

WHEREAS, the United States, the Settling Defendants, and the Town agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid additional prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants and the Town. Settling Defendants and the Town consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and the Town and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants or the Town under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Atlas" or "Atlas Tack Corporation" shall mean the Atlas Tack Corporation, a Massachusetts corporation formed in 1967 (hereafter, "Atlas Tack Corporation - Massachusetts"), in its own capacity and as successor-in-interest to a New York corporation known as Atlas Tack Corporation (hereafter, "Atlas Tack Corporation - New York"), which operated a manufacturing facility at the Site from the 1920s until 1967, when it was merged into Atlas Tack Corporation - Massachusetts.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

d. "Commonwealth" shall mean the Commonwealth of Massachusetts.

e. "Credit Amount" shall equal \$5,000/annum pro-rated over the period of time from the Date of Lodging through the date that both the Power Plant Building and the Three-Story Manufacturing Building have been demolished.

f. "Date of Lodging" shall mean the day that this Consent Decree is lodged with the United States District Court for the District of Massachusetts (prior to the 30-day comment period).

g. "Date of Entry" shall mean the date that this Consent Decree is approved by the United States District Court for the District of Massachusetts.

h. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

i. "DEP" shall mean the Massachusetts Department of Environmental Protection and any successor department or agency.

j. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

k. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

l. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. "Environmental Restriction and Easement" or "ERE" shall mean the instrument by which Atlas and, if EPA so requests, the Town, shall establish certain access

easements and environmental restrictions with respect to the Property to ensure that EPA has unlimited access to the Property for the purpose of implementing the Remedial Action or other response actions at the Site and to ensure non-interference with, or the protectiveness of, the Remedial Action, as required by Paragraphs 49 and 51.

n. "Fair Market Value" shall mean the price at which a property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, excluding any diminution in value as a result of any liens, mortgages, or other encumbrances on the property.

o. "Financial Information" shall mean the information provided in the letter sent by Atlas and Lewis to the United States dated August 2, 2005.

p. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9607, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

q. "Lewis" shall mean defendant M. Leonard Lewis.

r. "Net Sales Proceeds" shall mean the total value of all consideration received by Atlas in connection with sale of the Property pursuant to Paragraph 12 less the sum of (i) closing costs (limited to those reasonably incurred according to standard industry practice), including brokers' fees, that are actually paid by Atlas to an unaffiliated individual or entity from the sales proceeds, (ii) appraisal costs for the second appraisal of the property incurred by Atlas (limited to

those reasonably incurred according to standard industry practice) if EPA has requested a second appraisal of the Property pursuant to Paragraph 10, (iii) amounts paid at the time of closing to the holders of any liens or mortgages on the Property that have priority over the CERCLA lien filed by EPA on April 19, 2000 with respect to the Property (Bristol County Registry of Deeds, Book 4662 Page 120), but not including any amount paid out of the sale proceeds to any affiliate of Atlas holding a mortgage or other security interest in the Property including, without limitation, GNI, Inc., Ben-Mont Corporation, Brook Molding Corp., Dalbolt, Inc., and Boston Plate & Window Glass Company and (iv) the Office Building Demolition Credit. If the sum of the costs included in Subparagraphs (i) - (iv) of this Paragraph are equal to or in excess of the consideration received by Atlas in connection with the sale of the Property, Net Sales Proceeds shall equal zero. The costs incurred by Atlas in complying with the requirements of Section XIII (Access and Institutional Controls) shall not be deducted from Net Sales Proceeds.

s. "Office Building" shall mean the two-story office building located on the Property, as depicted on the map attached hereto at Appendix A.

t. "Office Building Demolition Credit" shall mean an amount up to \$100,000 of the reasonable costs incurred by Atlas in connection with any demolition of the Office Building that occurs at any time after Atlas executes this Consent Decree if all of the following conditions have been satisfied: (i) the demolition was implemented in response to an order or request issued by the Town, in order to protect public health or safety, at any time after Atlas executes this Consent Decree, (ii) Atlas submitted in writing to EPA, at least 30 days before any planned demolition, a proposed plan for the demolition, (iii) EPA informed Atlas, in writing, prior to the demolition, that it had determined that the demolition would not adversely affect the Remedial

Action (or EPA failed to respond to the proposed demolition plan within 30 days of receipt of the plan, was notified by Atlas of its failure to respond, and took no action within 15 days after receiving the follow-up notice), and (iv) at any time after two years from the Date of Entry, Atlas requested in writing that EPA allow it to make its additional payment pursuant to Paragraph 12 or 13 with respect to any portion of the Property that includes the Office Building and EPA declined to grant such request. In connection with any demolition of the Office Building, Atlas shall be responsible for complying with applicable federal, state or local laws or regulations and any determination by EPA that the demolition plan will not adversely affect the Remedial Action shall not relieve Atlas of any such obligations.

u. "Operational and Functional" shall have the meaning provided for under 40 CFR § 300.435(f)(2). Specifically:

A remedy becomes "operational and functional" either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

A determination that the remedy is functioning properly and performing as designed shall be based upon a finding, including all reasonably necessary supporting analyses, that the following requirements have been satisfied: (a) the restored areas are functioning properly in accordance with approved plans and specifications; and, (b) the remedy is meeting performance standards.

v. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or by a lower case letter.

w. "Parties" shall mean the United States, the Settling Defendants, and the Town.

x. "Plaintiff" shall mean the United States.

y. "Power Plant Building" shall mean the former power plant building located on the Property, as depicted on the map attached hereto as Appendix A.

z. "Property" shall mean the approximately 22 acres owned by Atlas located at or in the vicinity of 83 Pleasant Street in Fairhaven, Massachusetts, including the following lots shown on the Assessor's map for the Town of Fairhaven: Map 8 - Lot 94, Map 27 - Lot 15, Map 27 - Lot 15D, Map 27 - Lot 16, and Map 27 - Lot 17. A map showing the location of the Property is attached hereto as Appendix A.

aa. "Qualifying Insurance Payment" shall mean any payment made to Lewis, Atlas, or any of Atlas's affiliated companies, by an insurance company (or a parent, subsidiary, affiliate, successor or assign of such insurance company) that has provided insurance to Atlas, Atlas Tack Corporation (New York) (Atlas's predecessor corporation), or Lewis, as a named or an additional insured, in order to reimburse Lewis, Atlas, or any of Atlas's affiliated companies, for any costs incurred by Lewis or Atlas in connection with the Site including, without limitation, costs incurred in connection with any of their payment obligations or other obligations under this Consent Decree. Notwithstanding anything to the contrary in the preceding sentence, if Atlas or Lewis file contribution actions to recover any of the costs incurred by them in connection with this Consent Decree, and any of the contribution action defendants seek coverage from insurers with respect to their own liability or potential liability in connection with any such actions, any payments made by such insurers to or on behalf of the contribution action defendants that are used by the contribution action defendants to make payments to Atlas or Lewis, as a part of a settlement or otherwise, shall not be viewed as Qualifying Insurance Payments.

bb. "Remedial Action" shall mean those activities to be undertaken to implement the ROD.

cc. "ROD" or "Record of Decision" shall mean the EPA Record of Decision related to the Site dated March 10, 2000.

dd. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

ee. "Settling Defendants" shall mean M. Leonard Lewis and the Atlas Tack Corporation, both in its own capacity and as successor to Atlas Tack Corporation - New York. In addition, for the purposes of Sections IX (Covenant Not to Sue by Plaintiff), X (Reservation of Rights), XI (Covenant Not to Sue by Settling Defendants and Town) and XII (Effect of Settlement/Contribution Protection) of the Consent Decree, Settling Defendants shall also include (i) Atlas's officers, directors, employees, successors or assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on his/her/its status or capacity as an officer, director, employee, successor, or assign of Atlas, and not to the extent that the alleged liability of such person or entity arose independently of his/her/its status or capacity as an officer, director, employee, successor, or assign of Atlas, and (ii) the persons/entities listed at Appendix F. Settling Defendants shall not include the officers, directors, or employees of Atlas Tack Corporation - New York, except to the extent that such persons were subsequently officers, directors, or employees of Atlas and the alleged liability of such person is based on his/her status or capacity as an officer, director, or employee of Atlas.

ff. "Settling Federal Defendant" shall mean the United States Army Corps of Engineers and any successor departments, agencies, or instrumentalities of the United States.

gg. "Site" shall mean the Atlas Tack Corporation Superfund site, including the entire Atlas Tack Corporation property located at 83 Pleasant Street, Fairhaven, Bristol County, Massachusetts, the adjacent property owned by the Hathaway-Braley Wharf Company, Inc., all areas where hazardous substances emanating from those parcels are now or may come to be located, which includes certain property owned by the Town and certain additional property owned by Atlas, and all areas where EPA has taken or will take response actions pursuant to the ROD or any amendments thereof. The Site is generally depicted on the diagram attached hereto as Appendix B.

hh. "Three-Story Manufacturing Building" shall mean the three-story manufacturing building located on the Property, as depicted on the map attached hereto at Appendix A.

ii. "Town" shall mean the Town of Fairhaven, Massachusetts. In addition, for the purposes of Sections IX (Covenant Not to Sue by Plaintiff), X (Reservation of Rights), XI (Covenant Not to Sue by Settling Defendants and Town) and XII (Effect of Settlement/Contribution Protection) of the Consent Decree, Town shall also include the Town's officers and employees, but only to the extent that the alleged liability of the officer or employee is based on his/her status or capacity as an officer or employee of the Town, and not to the extent that the alleged liability of the officer or employee arose independently of his/her status or capacity as an officer or employee of the Town.

jj. "Town Property" shall mean the following lots owned by the Town as shown on the Assessor's map for the Town: Map 6 - Lot 46A, Map 27 - Lot 15A, Map 27 - Lot 15B,

Map 27 - Lot 15C, Map 27 - Lot 16A, and Map 27 - Lot 17A, and Map 27 - Lot 18. A map showing the location of the Town Property is attached hereto at Appendix A.

kk. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA and the Settling Federal Defendant.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants and the Town to make cash payments and take certain other actions to address their liability for the Site, as provided in the Covenant Not to Sue by Plaintiff in Section IX, and subject to the Reservations of Rights by United States in Section X, to resolve the contribution claims filed by Atlas against the Town and by Settling Defendants against the United States, and to further the goal of remediating the Site and promoting its active use.

#### **VI. PAYMENT OF RESPONSE COSTS**

##### **A. INSTALLMENT PAYMENTS BY ATLAS AND LEWIS**

5. Settling Defendants shall pay to the EPA Hazardous Substance Superfund the principal sum of \$2,335,000, plus an additional sum for Interest, reduced by the Credit Amount, as set forth below. Payment shall be made in installments. Each installment shall include the principal amount due plus an additional sum for accrued Interest on the outstanding principal balance. Interest shall begin to accrue on the date of lodging. The first principal payment of \$100,000 (plus accrued Interest) shall be due thirty days from the Date of Entry. The second principal payment of \$525,000 (plus accrued Interest) shall be due three months from the Date of Entry. The third principal payment of \$375,000 (plus accrued Interest) shall be due six months from the Date of Entry. The fourth principal payment of \$445,000 (plus accrued Interest) shall

be due twelve months from the Date of Entry. The fifth principal payment of \$445,000 (plus accrued Interest) shall be due eighteen months from the Date of Entry. The sixth and final principal payment of \$445,000 (plus accrued Interest) shall be due twenty-four months from the Date of Entry. The Settling Defendants may deduct the Credit Amount from the final payment. Prior to making this deduction, Settling Defendants shall obtain EPA's approval of their calculation of the Credit Amount. Settling Defendants may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly. The payment obligations of Settling Defendants pursuant to this Paragraph shall be secured by certain mortgages, as provided in Appendix E.

6. Payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2003V00713, EPA Region and Site Spill ID Number 01C4, and DOJ Case Number 90-11-3-06890. Payments shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Massachusetts following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of each installment payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions) and to the United States Environmental Protection Agency, Regional Financial Management Officer, Region I (Mail Code MCO), One Congress Street, Suite 1100, Boston, MA, 02114.

8. The total amount of each payment to be paid pursuant to Paragraph 5 shall be deposited in the Atlas Tack Corporation Superfund Site Special Account within the EPA

Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. If Settling Defendants receive a Qualifying Insurance Payment from any of their insurers, other than the payment that Settling Defendants expect to receive from a confidential settlement agreement executed in February, 2003, Settling Defendants agree to make an additional payment to the United States in an amount equal to 90% of any such Qualifying Insurance Payment, reduced by (a) the amount paid by the Settling Defendants, or by others on their account, to attorneys and/or consultants retained to obtain the Qualifying Insurance Payment, and (b) any unrecovered court costs, associated with obtaining the Qualifying Insurance Payment, incurred by the Settling Defendants, or by others on their account. All costs to be deducted must be verified in a sworn statement by each service provider. The statement must itemize the costs, describe the services provided, and affirmatively state that the costs for the services provided were incurred to obtain the Qualifying Insurance Payment. Payment to the United States shall be made in accordance with the provisions of Paragraph 17 of this Consent Decree within 30 days of obtaining any Qualifying Insurance Payment.

#### B. ADDITIONAL PAYMENT BY ATLAS AND LEWIS

10. In addition to the \$2,335,000 payment amount set forth in Paragraph 5, Atlas shall make an additional payment to EPA. Atlas shall elect to make this additional payment pursuant to either Paragraph 12 or Paragraph 13. EPA will send a notice to Atlas, with a copy to the Town, that Atlas is to make its election between Paragraph 12 and Paragraph 13. Such notice is expected to be sent at or before the time that EPA determines that the Remedial Action is Operational and Functional. Within 30 days of the date of such notice, Atlas shall submit to

EPA, for approval, the name of an appraiser to perform an appraisal of the Fair Market Value of the Property. If EPA fails to take action concerning the proposed appraiser within 30 days of receiving notice of Settling Defendants' proposed appraiser, EPA shall be deemed to have approved the appraiser on the 30<sup>th</sup> day after receipt of the notice. Within 30 days of EPA's approval of the appraiser, Atlas shall submit to EPA an appraisal of the Fair Market Value of the Property, paid for by Atlas, and performed based upon appraisal assumptions satisfactory to EPA and Atlas. If EPA, within 30 days of receiving the appraisal, requests that Atlas obtain a second appraisal of the Property, Atlas shall, within 30 days of the date of the request, submit to EPA for approval the name of another appraiser to perform an appraisal of the Fair Market Value of the Property. If EPA fails to take action concerning the proposed second appraiser within 30 days of receiving notice of Settling Defendants' proposed appraiser, EPA shall be deemed to have approved the appraiser on the 30<sup>th</sup> day after receipt of the notice. Within 30 days of EPA's approval of the second appraiser, Atlas shall submit to EPA a second appraisal of the Fair Market Value of the Property, paid for by Atlas, and performed based upon appraisal assumptions satisfactory to EPA and Atlas. If Atlas is required to obtain a second appraisal pursuant to the terms of this Paragraph, the costs incurred by Atlas for such appraisal may be deducted from the amount to be paid by Atlas to the United States pursuant to Paragraph 12 (as provided for in the definition of Net Sales Proceeds) or pursuant to Paragraph 13 (as provided for in Paragraph 13). Within 45 days of submitting the first appraisal to EPA or, if EPA has requested a second appraisal, within 30 days of submitting the second appraisal to EPA, Atlas shall notify EPA, in writing, as to whether it elects to make its additional payment under Paragraph 12 or Paragraph 13.

11. Atlas agrees that, after execution of this Decree, it will not sell, assign, transfer, further encumber, or exchange the Property (or any portion thereof), except in accordance with Section XIII (Access and Institutional Controls), until such time as the Property is sold pursuant to Paragraph 12 or, if Atlas elects to make its additional payment pursuant to Paragraph 13, until such time as Atlas has made the payment required by Paragraph 13. Lewis agrees that he will not enter into any settlement or other resolution of LPP Mortgage, Ltd. v. Lewis et al., No. 03-0342 (Suffolk Super. Ct.) or LPP Mortgage, Ltd. v. Lewis et al., No. 00-5266-E (Suffolk Super. Ct.) unless such settlement or other resolution includes the immediate and unconditional release of the mortgage given by Atlas to the Small Business Administration with respect to the Property on August 14, 1980 (Book 1808, Page 544). Atlas agrees to file with the Town of Fairhaven, within 60 days of the Date of Entry, and at any time thereafter in the case of any increased assessment, an application seeking an abatement with respect to the real estate taxes on the Property. If Atlas elects to make its additional payment pursuant to Paragraph 12, Atlas also agrees that, to the extent that any corporation affiliated with Atlas holds a mortgage or other security interest in the Property, Atlas shall cause such affiliated corporation to release such mortgage or other security interest, within 15 days of the date that Atlas elects to make its additional payment pursuant to Paragraph 12, by filing a release with the Bristol County Registry of Deeds and providing a copy of such release to the United States. Such affiliated corporations shall include, but shall not be limited to: GNI, Inc., Ben-Mont Corporation, Brook Molding Corp., Dalbolt, Inc., and Boston Plate & Window Glass Company.

12. If Atlas elects to follow the procedures of this Paragraph 12, Atlas shall, within 15 days of making the election, begin to make best efforts to sell the Property for at least Fair Market Value. Atlas shall sell the Property, in an arm's length transaction to a non-affiliated and

non-related purchaser, upon such terms and conditions, including the selection of a real estate broker and the terms of the listing agreement and sales price, as have been given prior written approval by EPA. Atlas shall continue such efforts until such time as Atlas has sold the Property in accordance with the terms of this Paragraph 12. Atlas shall provide EPA with any offer to purchase the Property within seven days of receipt of such offer. Any contract of sale shall state that the sale is conditioned upon EPA's approval of the sale. All consideration for the sale shall be in cash and shall be paid at the time of closing, unless EPA agrees to a different arrangement. Within five days of entering into a contract of sale with any prospective purchaser, Atlas shall provide EPA with a copy of the sales contract. Atlas shall provide such sales contract to EPA at least 30 days prior to the closing date. Atlas shall not go forward with the closing unless EPA approves the sale. The sale shall be deemed to have been approved by EPA if EPA does not respond within 30 days of being provided a copy of the sales contract, Atlas sends a subsequent notice to EPA indicating that EPA has not responded within 30 days, and EPA fails to take any action within 15 days of its receipt of the subsequent notice. Atlas shall provide EPA with an estimate of the Net Sales Proceeds at least 10 days prior to the closing of the sales transaction. On the date of the closing, Atlas shall pay to the EPA Hazardous Substance Superfund an amount equal to 95% of the Net Sales Proceeds. Atlas shall notify EPA of the completion of the sale within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a worksheet setting forth the Net Sales Proceeds.

13. If Atlas elects to follow the procedures of this Paragraph 13, Atlas, or its designee, shall, within 30 days of making the election, pay to the EPA Hazardous Substance Superfund an amount equal to the appraisal or, if EPA has requested a second appraisal, the average of the two

appraisals, minus the sum of: (i) the real property taxes owed in connection with the Property (including interest and penalties) as of the date of the payment to EPA (with adjustments, if any, pursuant to Paragraph 14), which Atlas, or its designee, shall pay to the Town on the date of the payment to EPA, (ii) any amounts paid, on the date of the payment to EPA, to satisfy (or partially satisfy) the holders of any other liens or mortgages on the Property that have priority over the CERCLA lien filed by EPA on April 19, 2000 with respect to the Property (Bristol County Registry of Deeds, Book 4662 Page 120), but not including any amount paid to the Small Business Administration or its assignee in connection with the mortgage given by Atlas to the Small Business Administration on August 14, 1980 (Book 1808, Page 544) with respect to the Property or any amount paid to any affiliate of Atlas holding a mortgage or other security interest in the Property including, without limitation, GNI, Inc., Ben-Mont Corporation, Brook Molding Corp., Dalbolt, Inc., and Boston Plate & Window Glass Company, (iii) the Office Building Demolition Credit, and (iv) 5% of the difference between (A) the appraisal or, if EPA has requested a second appraisal, the average of the two appraisals, and (B) the sum of the amounts listed in Subparagraphs (i) and (iii) of this Paragraph. If the sum of the amounts set forth at Subparagraphs (i) and (iii) of this Paragraph are equal to or in excess of the appraisal or, if EPA has requested a second appraisal, the average of the two appraisals, no payment need be made to EPA.

14. If, at the time of sale of the Property pursuant to Paragraph 12 or the payment made by Atlas pursuant to Paragraph 13, the real estate taxes owed to the Town with respect to the Property (including interest and penalties) that have accrued prior to the date of sale under Paragraph 12 or the date of the payment to EPA pursuant to Paragraph 13, when combined with the amount, if any, paid by Atlas on the date of the payment to EPA (under Paragraph 12 or 13)

to satisfy (or partially satisfy) the holders of any liens or similar secured interests that have priority over the Town's tax liens, exceed the proceeds of sale (net after closing costs) under Paragraph 12 or the Fair Market Value in the event of a payment under Paragraph 13, then the Town will take one or more of the following steps, as may be necessary, to reduce the amount of such real estate taxes, by an amount equal to the lesser of (a) the amount of the exceedance referred to above or (b) the amount of such real estate taxes (with the intent that upon the sale pursuant to Paragraph 12 or the payment pursuant to Paragraph 13, the Property shall be free of any lien for accrued real estate taxes (including penalties and interest) owed to the Town through the date of sale pursuant to Paragraph 12 or the date of payment pursuant to Paragraph 13):

- a. Waive taxes, penalties and interest,
- b. Petition the Commissioner of Revenue to waive taxes, penalties and interest,
- c. Enter into an agreement reducing or eliminating taxes, penalties and interest, or
- d. Accept payment of the taxes, without reducing the amount as set forth above,

and then paying the amount by which the taxes were to be reduced, as set forth above, back to the person that paid the taxes to the Town.

The provisions of this Paragraph 14 shall take effect only if, at the time of a sale under Paragraph 12 or a payment under Paragraph 13, the Town is paid an amount equal to the accrued real estate taxes owed with respect to the Property (including interest and penalties) through the date of the sale (under Paragraph 12) or the payment (under Paragraph 13) as reduced by the amount set forth above.

15. With respect to the notice described in Paragraph 10, EPA may send separate notices with respect to separate portions of the Property. If EPA sends a notice with respect to only a portion of the Property, the requirements of Paragraphs 11 - 14 shall govern with respect to that

portion of the Property and the remainder of the Property shall continue to be governed by the requirements of Paragraphs 10 - 14.

16. Prior to receiving the notice from EPA described in Paragraph 10, Atlas may request that EPA allow it to make its additional payment pursuant to Paragraph 12 or 13 with respect to all or a portion of the Property. If EPA approves any such request, the procedures set forth in Paragraphs 10 - 14 shall be followed with respect to such portion of the Property, except that the date of EPA's approval shall be viewed as the date of EPA's notice pursuant to Paragraph 10. If the request relates only to a portion of the Property, the remaining portion of the Property shall continue to be governed by the requirements of Paragraphs 11 - 14. In determining whether to approve any such request, EPA may consider (a) whether it expects to take further response actions with respect to the Property or portion of the Property at issue, (b) whether the sale of the Property or portion thereof will interfere with the Remedial Action, (c) whether a delay in the sale of the Property or portion thereof may result in a higher sales price, and (d) if the request relates to only a portion of the Property, whether sale of the entire Property could result in greater proceeds than the sale of separate portions of the Property.

17. Payment under Paragraphs 12 - 13 shall be made by certified or cashier's check made payable to EPA Hazardous Substance Superfund. The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID 01C4 , DOJ Case Number 90-11-3-06890, and USAO File No. 2003V00713 and shall be sent to Financial Litigation Unit, United States Attorney's Office, U.S. Courthouse, Suite 9200, One Courthouse Way, Boston, MA, 02210. Atlas shall send notice that payment has been made in accordance with Paragraph 7.

### C. PAYMENT BY THE TOWN

18. Within 30 days after any accrued real estate taxes (including interest and penalties) with respect to the Property (or portion thereof) are paid to the Town in connection with any sale of the Property under Paragraph 12 or in connection with the payment provisions of Paragraph 13, the Town shall pay to the EPA Hazardous Substance Superfund, in accordance with the payment procedures set forth in Paragraph 17, an amount equal to (a) the accrued real estate taxes (including interest and penalties) paid to the Town with respect to the Property (or portion thereof) minus (b) \$80,000 plus Interest on \$80,000 accruing from the Date of Lodging to the date payment is made to EPA. If the Property is divided into separate portions pursuant to Paragraphs 15 or 16, the \$80,000 (plus Interest) holdback amount shall be a maximum holdback amount applicable to all portions of the Property when the holdback amounts applicable to each portion are added together.

19. The Town agrees that it will not sell the Property pursuant to a tax sale or take the Property pursuant to a tax taking in connection with real estate taxes (including penalties and interest) that accrue with respect to the Property through such time as the Property is sold pursuant to Paragraph 12 or, if Atlas has elected to retain the Property pursuant to Paragraph 13, such time as the payment to EPA (if any) under Paragraph 13 is due. However, if (a) Atlas elects to sell the Property pursuant to Paragraph 12, and the Property is not sold within two years of the date that Atlas elects this option, (b) Atlas elects to make its payment under Paragraph 13, but fails to make the required payment (if any) within 90 days of making the election, or (c) Atlas fails to make an election in a timely manner after receiving EPA's notice to make an election pursuant to Paragraph 10, the Town may pursue a tax sale or a tax taking with respect to any real estate taxes (including penalties and interest) that have accrued with respect to the Property. In

connection with any such tax sale or tax taking, the Town shall have no obligation to reduce the accrued real estate taxes as provided in Paragraph 14. If the Town proceeds with a tax sale and the Property is sold to a third-party, the Town shall pay to EPA all proceeds obtained in connection with any such tax sale minus the sum of (a) \$80,000 plus Interest on \$80,000 accruing from the Date of Lodging to the date payment is made to EPA and (b) the reasonable costs incurred by the Town in pursuing the tax sale. If the Town elects to take the Property, or the Town becomes the owner of the Property in connection with the tax sale proceeding, the Town shall petition for foreclosure of all rights of redemption within one year of the taking. If there is a redemption with respect to the Property, either before or after the petition is filed, the Town shall pay EPA all proceeds obtained in connection with the redemption minus the sum of (a) \$80,000 plus Interest on \$80,000 accruing from the Date of Lodging to the date payment is made to EPA and (b) the reasonable costs incurred by the Town in pursuing the tax sale or tax taking and the petition to foreclose the right of redemption. If there is no redemption, the Town shall begin to make best efforts to sell the Property for at least Fair Market Value within 90 days after obtaining a decree barring all rights of redemption and shall pay EPA all proceeds obtained in connection with any such sale minus the sum of (a) \$80,000 plus Interest on \$80,000 accruing from the Date of Lodging to the date payment is made to EPA and (b) the reasonable costs incurred by the Town in pursuing the tax sale or tax taking, the petition to foreclose the right of redemption, and the ultimate sale of the Property. The provisions of this Paragraph shall not bar or otherwise impair the right of the Town to pursue the collection of those taxes that accrue with respect to the Property after a sale pursuant to Paragraph 12 or, if Atlas has elected to retain the Property pursuant to Paragraph 13, after the payment to EPA (if any) under Paragraph 13.

20. If Atlas pays all or a portion of the real estate taxes (including interest and penalties) to the Town at any time prior to the sale of the Property (or portion thereof) pursuant to Paragraph 12 or prior to making a payment with respect to the Property (or portion thereof) pursuant to Paragraph 13, the Town shall pay an equivalent amount into a separate interest bearing escrow account and, at the time the Property or portion thereof is sold pursuant to Paragraph 12 or a payment is made pursuant to Paragraph 13, the escrowed amount shall be paid to the United States along with the amounts required by Paragraph 12 or 13. At such time, the Town shall implement the procedures of Paragraph 14 and shall consider both the taxes already paid as well as any additional tax liability still owing on the Property in determining whether there is any need to reduce the overall tax liability. The total amount of the payment to EPA shall not exceed the total consideration received by Atlas in connection with the sale of the Property or portion thereof (if the Property or portion thereof is being sold pursuant to Paragraph 12) or the Fair Market Value of the Property or portion thereof (if Atlas is making the payment pursuant to Paragraph 13), and the \$80,000 holdback amount shall be applicable to payments made by the Town from the escrowed amount.

#### D. PAYMENTS ON BEHALF OF SETTLING FEDERAL DEFENDANT

21. As soon as reasonably practicable after the Date of Entry, the United States, on behalf of the Settling Federal Defendant, shall pay \$50,000 to the EPA Hazardous Substance Superfund, for response costs incurred and to be incurred at the Site. If the payment to the EPA Hazardous Substances Superfund required by this Paragraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any

event, if this payment is not made within 120 days after the Date of Entry, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998. In the event that payments required by this Paragraph are not made within thirty days from the Date of Entry, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

22. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Defendant under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Defendant obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

23. Settling Federal Defendant hereby agrees not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by Settling Federal Defendant in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

#### **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

24. Acceleration and Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, all remaining installment payments and all

accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

25. Stipulated Penalty.

a. If any amounts due under Paragraphs 5 or 12 - 13 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 24, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph 25 shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 01C4, and DOJ Case Number 90-11-3-06890, and shall be sent to:

EPA Region 1  
Attn: Superfund Accounting  
P.O. Box 360197M  
Pittsburgh, PA 15251

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions) to:

United States Environmental Protection Agency  
Regional Financial Management Officer  
Region I (Mail Code MCO)  
One Congress Street - Suite 1100  
Boston, MA 02114

d. Penalties shall accrue as provided in this Paragraph 25 regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

26. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action including, but not limited to, costs of attorney time.

27. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

28. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

#### **VIII. RELEASE OF NOTICE OF FEDERAL LIEN**

29. If Settling Defendants have made all of the payments required by Paragraphs 5 and 12 - 13, EPA shall, within 30 days of receipt of the final payment, file a Release of Notice of Federal Lien in the Bristol County Southern District Registry of Deeds, New Bedford, MA. The Release of Notice of Federal Lien shall release the Notice of Federal Lien recorded on April 19, 2000 (Book 4662, Page 120).

## **IX. COVENANT NOT TO SUE BY PLAINTIFF**

30. Covenant for Settling Defendants: Except as specifically provided in Section X (Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, with regard to the Site, or for penalties pursuant to Section 104(e)(5)(B) of CERCLA, 42 U.S.C. 9604(e)(5)(B), for the failure to provide access to the Property in response to the August 2, 2004 EPA letter seeking access to the Property and the August 18, 2004 EPA Order seeking access to the Property. With respect to present and future liability, these covenants shall take effect upon receipt by EPA of the first payment required by Section VI (Reimbursement of Response Costs), Paragraph 5. These covenants are conditioned upon the satisfactory performance by Settling Defendants of all of their obligations under this Consent Decree, including, but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and these covenants and the contribution protection in Paragraph 42 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States's right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. These covenants extend only to Settling Defendants and do not extend to any other person.

31. Covenant for Town: Except as specifically provided in Section X (Reservation of Rights), the United States covenants not to sue or to take administrative action against the Town pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect, and is conditioned, upon the satisfactory performance by the Town of all of its obligations under this Consent Decree including, as applicable, the payment by the Town to EPA of those payments required by Section VI (Payment of Response Costs), Paragraphs 18 - 20. This covenant not to sue extends only to the Town and does not extend to any other person.

32. Covenant for Settling Federal Defendant: Except as specifically provided in Section X (Reservation of Rights), EPA covenants not to take administrative action against the Settling Federal Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. EPA's covenant extends only to the Settling Federal Defendant and does not extend to any other person.

#### **X. RESERVATION OF RIGHTS**

33. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraphs 30 - 32. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and the Town, and EPA reserves, and this Consent Decree is without prejudice to, all rights against the Settling Federal Defendant, with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources,

and for the costs of any natural resource damage assessments;

d. liability, with respect to Settling Defendants, based upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree, and, with respect to the Town, based upon the Town's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree and, with respect to the Settling Federal Defendant, based upon the Settling Federal Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, except as provided in Section 119 of CERCLA, 42 U.S.C. § 9619, pertaining to response action contractors, after signature of this Consent Decree; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

34. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action against Settling Defendants, or to commence a new action seeking relief from Settling Defendants other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 59(b), is false or, in any material respect, inaccurate.

35. If the United States reinstitutes or reopens this action in accordance with the reservation of rights set forth above in Paragraphs 33(a) or 34, the Parties reserve the right to assert, in the reopened action, that any of the Court's prior rulings in this action should govern the proceedings in the reopened action under the "law of the case" doctrine, subject to the right of any Party to appeal such ruling if and when incorporated into a final judgment.

**XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS AND TOWN**

36. Settling Defendants and the Town covenant not to sue or to continue to pursue, and covenant not to assert or pursue, any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site or related to this litigation, including any claim under the United States Constitution, the Constitution of the Commonwealth of Massachusetts, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

37. As part of their agreement set forth in Paragraph 36, Atlas and Lewis hereby dismiss, with prejudice, the counterclaims filed by them against the United States in this action.

38. Except as provided in Paragraph 45 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 33 (c) - (e), but only to the extent that Settling Defendants' or the Town's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

39. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

40. The Settling Defendants and the Town reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

41. Atlas hereby dismisses, with prejudice, the contribution action it filed against the Town in Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 (WGY). Lewis hereby releases the Town, and its officers, agents and employees from claims for contribution as if he had been a co-plaintiff seeking recovery against the Town similar to that sought by Atlas. The Town hereby releases Lewis and Atlas and their principals, officers, agents and employees from any and all claims for contribution for payments made by the Town under the terms of this Consent

Decree. The releases set forth in this Paragraph shall not apply to any claim for contribution arising from environmental contamination or injury occurring after the Date of Entry.

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

42. Except as provided in Paragraph 3.ee and 3.ii, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a Party to this Decree may have under applicable law. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

43. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants, the Town and the Settling Federal Defendant are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants, the Town or the Settling Federal Defendants coming within the scope of such reservations.

44. Settling Defendants and the Town agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants and the Town also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, Settling Defendants and the Town shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

45. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and the Town shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph 45 affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

### **XIII. ACCESS AND INSTITUTIONAL CONTROLS**

46. Atlas, with respect to the Property, and the Town, with respect to the Town Property, shall, commencing on the Date of Lodging, provide the United States, the Commonwealth of Massachusetts ("Commonwealth") and their representatives, including EPA, the Massachusetts Department of Environmental Protection ("DEP"), and their respective agents, contractors,

subcontractors and employees, with access at all reasonable times for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

a. Monitoring, investigation, removal, remedial or other activities at the Site including, but not limited to (i) surveying building structures and property; (ii) sampling soil, groundwater, sludges, sediment, and debris and monitoring air; (iii) erecting adequate erosion and sedimentation controls; (iv) maintaining site security including any repair of security structures such as the perimeter fence; (v) mobilizing the necessary equipment and structures to conduct the Remedial Action including but not limited to, the construction of access roads, automobile and truck parking lots, material transfer stations, stockpiling areas, decontamination areas, equipment sheds or trailers, storage tanks, and worker sanitary facilities; (vi) demolition of certain existing on-site structures and excavation of the concrete slab located where the one-story portion of the main manufacturing building once stood; (vii) demolition, excavation, and sampling within the footprint of demolished structures and excavated concrete slab, with further excavation where contamination is detected; (viii) sampling and excavation of contaminated underground conveyance trenches/piping, plating pit and acid trench; (ix) excavation of contaminated soils and sediment; (x) off-site disposal of contaminated soils/sediment; (xi) sampling, segregation and processing of demolition debris, and off-site disposal; (xii) backfilling and grading of demolition/excavation areas to facilitate adequate drainage and final restoration; (xiii) demobilizing site equipment and structures; (xiv) planting trees for phytoremediation, and (xv) inspecting and monitoring the Site after completion of the work to ensure restoration measures are successful;

- b. Verifying any data or information submitted to the United States or the Commonwealth concerning conditions at the Site;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XIV (Access to Information);
- g. Assessing Settling Defendants' compliance with this Consent Decree; and
- h. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

For all periods on and after the date of lodging of the Consent Decree, the access terms set forth in the Court's order dated September 23, 2004 shall no longer be effective, and instead the access rights granted by this Paragraph shall be in effect.

47. Commencing on the date of lodging of this Consent Decree, Atlas shall not perform, nor allow any of its employees, agents, independent contractors, lessees or assigns to perform, any of the following activities or uses in, on, over or under the Property:

- a. Area A (as shown on map attached hereto as Appendix G)
  - (1) withdrawal, consumption, exposure or utilization of groundwater, for any purpose;
  - (2) excavation, drilling or otherwise disturbing the soil, for any purpose;

(3) cultivation of plants or crops for human consumption;

(4) residential or recreational activity or use; or

(5) any use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the remedial measures performed and/or to be performed at the Site in accordance with the ROD; including without limitation phytoremediation, groundwater monitoring wells, and/or as said remedial measures are shown on the as-built plans or other equivalent plans developed or to be developed for the Remedial Action and retained on file at EPA and DEP.

b. Area B (as shown on map attached hereto as Appendix G)

(1) withdrawal, consumption, exposure or utilization of groundwater, for any purpose;

(2) excavation, drilling or otherwise disturbing the soil, for any purpose;

(3) cultivation of plants or crops for human consumption;

(4) residential, recreational, commercial, or industrial activity or use; or

(5) any use or activity that would interfere with, adversely affect or otherwise disturb the implementation, integrity, protectiveness or operation of the remedial measures performed and/or to be performed at the Site in accordance with the ROD; including without limitation phytoremediation, groundwater monitoring wells, and/or as said remedial measures are shown on the as-built plans or other equivalent plans developed or to be developed for the Remedial Action and retained on file at EPA and DEP.

c. Notwithstanding the restrictions established in this Paragraph 47, Atlas may perform the permitted activities and uses in accordance with Paragraph 4 (Permitted Activities and Uses) of the ERE and/or emergency excavation in accordance with Paragraph 6 (Emergency Excavation) of the ERE, as amended.

d. Once the ERE has been approved and recorded in accordance with Paragraph 49 below, if the restrictions established in the ERE are modified pursuant to its terms, such modifications shall be considered modifications of the restrictions set forth above.

e. Response actions, undertaken or approved by EPA or DEP, and their respective employees, agents, and contractors, shall not be subject to restrictions established pursuant to this Consent Decree.

48. If EPA determines that certain activities should be prohibited on Town Property in order to ensure non-interference with or the protectiveness of the Remedial Action, the Town, after being notified by EPA of such prohibited activities, shall not perform such prohibited activities on the Town Property or allow any of its employees, agents, independent contractors, lessees or assigns, to perform such prohibited activities on the Town Property, provided that the Town shall not be prohibited from operating or maintaining the hurricane barrier or the municipal storm water drainage system, except for restrictions that EPA determines will materially interfere with, or undermine the protectiveness of, the Remedial Action. In addition, if EPA so requests, the Town shall subordinate its tax lien concerning the Property to the Environmental Restriction and Easement that will be filed by Atlas with respect to the Property by recording a subordination agreement in substantially the form attached hereto as Appendix C.

49. Environmental Restriction and Easement for Property. With regard to the Property, Atlas shall execute and record in the Bristol County Southern District Registry of Deeds, New Bedford, Massachusetts, an easement (hereinafter "Environmental Restriction and Easement" or "ERE"), running with the land in perpetuity, that (a) grants a right of access for the purpose of conducting the Remedial Action including, but not limited to, those activities listed in Paragraph 46, or other response actions at the Site and (b) establishes and grants the right to enforce the land/water use restrictions listed in Paragraph 47 with respect to the Property, or other restrictions with respect to the Property that EPA determines are necessary to implement and ensure non-interference with, or the protectiveness of, the Remedial Action. Atlas shall grant the access rights and the rights to enforce the land/water use restrictions to the United States, on behalf of EPA and its representatives. Such grant shall be fully assignable, in whole or in part. Atlas shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

- a. a draft ERE, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the Commonwealth of Massachusetts;
- b. a survey plan in recordable form (and a sketch plan, if registered land) and legal description of the Property, and of any separately restricted areas if applicable;
- c. a current title insurance commitment for title insurance in the amount of \$100,000 running to EPA and DEP, or some other evidence of title acceptable to EPA, which certifies good, clear and marketable title in Atlas and shows title to the land described in the ERE to be free and clear of all prior liens and encumbrances (except those liens or encumbrances that

are approved by EPA and DEP), and a copy of all relevant title documents. Subordination agreements shall be substantially in the form attached hereto as Appendix C.

Within 15 days of EPA's approval and acceptance of the ERE and the title evidence, Atlas shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the ERE and survey plan (and sketch plan, if applicable) with the Bristol County Southern District Registry of Deeds. Within 30 days of recording the ERE and survey plan (and sketch plan, if applicable), Atlas shall provide EPA with title evidence updated through the time of recording and a final title insurance policy in the amount of \$100,000, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded ERE and survey plan (and sketch plan, if applicable) showing the clerk's recording stamps. Within sixty (60) days of recording the ERE and survey plan (and sketch plan, if applicable), or as soon as available thereafter, Atlas shall provide EPA with a copy of the recorded ERE and survey plan (and sketch plan, if applicable), evidencing the stamped registry book and page numbers or other, final recording information. The ERE and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111. The ERE and title evidence (including final title evidence) and certificate of title or equivalent shall also satisfy any additional requirements of the Massachusetts Contingency Plan ("MCP"), 310 Code of Massachusetts Regulations 40.0000.

50. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after recording and/or registering the ERE, or any amendment or release of the ERE, Atlas shall: (i) provide the Town's Chief Municipal Officer,

Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded and/or registered ERE; (ii) publish a legal notice indicating the recording and/or registering of the ERE, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the Town; and (iii) provide copies of said legal notice to EPA and DEP within seven (7) days of its publication.

51. Environmental Restriction and Easement for Town Property. If EPA so requests, the Town shall record an easement with respect to the Town Property, in accordance with the procedures and requirements of Paragraphs 49 and 50, that (a) grants a right of access for the purpose of conducting the Remedial Action including, but not limited to, those activities listed in Paragraph 46, or other response actions at the Site and/or (b) establishes and grants the right to enforce the land/water use restrictions with respect to the Town Property that EPA determines are necessary to ensure non-interference with, or the protectiveness of, the Remedial Action.

52. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to ensure the integrity and protectiveness of the remedy, or ensure non-interference therewith, Atlas and the Town shall cooperate with EPA's efforts to secure such governmental controls.

53. Notwithstanding any provision of this Consent Decree, the United States shall retain all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. ACCESS TO INFORMATION**

54. Settling Defendants and the Town shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

55. Confidential Business Information and Privileged Documents.

a. Settling Defendants and the Town may assert business confidentiality claims covering part or all of the records submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants and the Town may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide the United States with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description

of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

#### **XV. MAINTENANCE OF PROPERTY**

56. Atlas shall be responsible for the maintenance of the Property and all structures located thereon until such time as Atlas transfers the Property to another person pursuant to Paragraph 12 or, if Atlas elects to make a payment to the United States pursuant to Paragraph 13, until such time as Atlas transfers the Property to some other person after having made the payment required by Paragraph 13. However, to the extent that EPA determines that fencing is needed to ensure the safe conduct of the Remedial Action, to secure the equipment of EPA or its contractors located at the Site, or to protect the public from being harmed due to exposure to (a) hazardous substances at the Site, (b) EPA's or its contractors' equipment at the Site, or (c) activities associated with the Remedial Action, EPA shall be responsible for the erection/maintenance of any such fencing. Except as expressly set forth above, this Paragraph shall not relieve Atlas of the obligation to comply with applicable local, state and federal laws and regulations, or court orders or judgments, regarding the ownership, use, operation and maintenance of the Property including, without limitation, any need for fencing surrounding the Office Building (unless EPA determines that such fencing is needed to ensure the safe conduct of the Remedial Action, to secure the equipment of EPA or its contractors located at the Site, or to protect the public from being harmed due to

exposure to (a) hazardous substances at the Site, (b) EPA's or its contractors' equipment at the Site, or (c) activities associated with the Remedial Action, in which case EPA shall be responsible for the erection/maintenance of such fencing).

#### **XVI. RETENTION OF RECORDS**

57. Until such time as Settling Defendants have complied with their payment obligations pursuant to Paragraph 5, Settling Defendants and the Town shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to (a) response actions taken at the Site or (b) the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

58. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

#### **XVII. CERTIFICATION**

59. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against them regarding the Site, and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendants execute this Consent Decree.

60. The Town hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XVIII. NOTICES AND SUBMISSIONS**

61. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, Settling Defendants, and the Town respectively.

As to the United States:

As to DOJ

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(Re DOJ # 90-11-3-06890)

Donald G. Frankel  
Trial Attorney  
Environmental Enforcement Section  
ENRD  
Department of Justice  
One Gateway Center  
Suite 616  
Newton, MA 02458

Chief  
Environment Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(Re DOJ #90-11-6-17291)

As to EPA

Chief, Superfund Legal Office  
Office of Environmental Stewardship  
EPA Region I (Mail Code SES)  
One Congress Street – Suite 1100  
Boston, MA 02114  
Re: Atlas Tack Corp. Superfund Site

Remedial Project Manager -- Atlas Tack Corp. Superfund Site  
Office of Site Remediation and Restoration  
EPA Region I (Mail Code HBO)  
One Congress Street – Suite 1100  
Boston, MA 02114

As to Settling Defendants:

Robert J. Gilbert  
Gilbert & Renton, LLC  
23 Main Street  
Andover, MA 01820

Donald W. Stever  
Kirkpatrick & Lockhart Nicholson Graham LLP  
599 Lexington Avenue  
New York, NY 10022

Paul J. Leikhim, Esq.  
c/o Atlas Tack Corporation  
266 Beacon Street  
Second Floor  
Boston, MA 02116

M. Leonard Lewis, President (or current President)  
Atlas Tack Corporation  
266 Beacon Street  
Second Floor  
Boston, MA 02116

As to the Town

Town Clerk  
40 Center Street  
Fairhaven, MA 02719

Thomas P. Crotty  
Perry, Hicks, Crotty and Deshaies, LLP  
388 County Street, Second Floor  
New Bedford, MA 02740

**XIX. RETENTION OF JURISDICTION**

62. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XX. INTEGRATION/APPENDICES**

63. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Map Showing Location of Property and Town Property

Appendix B: Map of Site

Appendix C: Sample Subordination Agreement

Appendix D: Draft Environmental Restriction and Easement

Appendix E: Agreements to Record Mortgages to Secure Payment (Agreement by Tri-Villa Trust to Provide Deed of Trust (Appendix E1), Agreement by Amory Pacific, LLC to Provide Mortgage (Appendix E2), Agreement by La Maison, LLC to Provide Mortgage (Appendix E3)).

Appendix F: Additional Settling Defendants

Appendix G: Map Showing Areas Subject to Use Restrictions

## **XXI. MODIFICATION**

64. Non-material modifications of the Consent Decree may be made by written agreement of the Parties. Material modifications of the Consent Decree shall be made by written agreement of the Parties and shall be submitted to the Court for approval.

65. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to the Consent Decree.

## **XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

66. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants and the Town consent to the entry of this Consent Decree without further notice.

67. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

## **XXIII. SIGNATORIES/SERVICE**

68. Each undersigned representative of a Settling Defendant or of the Town and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

69. Settling Defendants and the Town hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants and the Town in writing that it no longer supports entry of the Consent Decree.

70. Settling Defendants and the Town shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and the Town hereby agree to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XXIV. FINAL JUDGMENT**

71. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States, Settling Defendants and the Town. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
William G. Young  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Tack Corporation, No. 03 CV 11601 WGY (D. Mass.) and Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 WGY (D. Mass.) relating to the Atlas Tack Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: 12/5/05

Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date: 12/9/05

Donald G. Frankel  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
Department of Justice  
One Gateway Center, Suite 616  
Newton, MA 02458  
(617) 450-0442

Date: 12/7/05

Joshua Levin  
Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Michael J. Sullivan  
United States Attorney  
District of Massachusetts

George B. Henderson, II  
Assistant United States Attorney  
United States Attorney's Office  
U.S. Courthouse  
Suite 9200  
One Courthouse Way  
Boston, MA 02210

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Tack Corporation, No. 03 CV 11601 WGY (D. Mass.) and Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 WGY (D. Mass.) relating to the Atlas Tack Corporation Superfund Site.

Date: 9/1/05

\_\_\_\_\_  
Robert W. Varney  
Regional Administrator  
U.S. Environmental Protection Agency  
Region I  
One Congress Street – Suite 1100 (RAA)  
Boston, MA 02114

Date: 8/30/05

\_\_\_\_\_  
Ronald A. González  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region I  
One Congress Street – Suite 1100 (SES)  
Boston, MA 02114

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Tack Corporation, No. 03 CV 11601 WGY (D. Mass.) and Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 WGY (D. Mass.) relating to the Atlas Tack Corporation Superfund Site.

FOR ATLAS TACK CORPORATION:

Date: Aug 22 2005

M. Leonard Lewis  
President  
Atlas Tack Corporation  
266 Beacon Street  
Second Floor  
Boston, MA 02116

*president and not  
individually*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: M. Leonard Lewis

Title:

Address: Osterville MA 02655

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Tack Corporation, No. 03 CV 11601 WGY (D. Mass.) and Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 WGY (D. Mass.) relating to the Atlas Tack Corporation Superfund Site.

FOR M. LEONARD LEWIS:

Date: Aug 2 2005

\_\_\_\_\_  
M. Leonard Lewis

Osterville, MA 02655

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: M. Leonard Lewis

Title: -

Address: Osterville MA 02655

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Tack Corporation, No. 03 CV 11601 WGY (D. Mass.) and Atlas Tack Corporation v. Town of Fairhaven, No. 01 CV 10501 WGY (D. Mass.) relating to the Atlas Tack Corporation Superfund Site.

FOR TOWN OF FAIRHAVEN:

Date: \_\_\_\_\_

Michael Silvia  
Chairman of the Board of Selectmen  
Town of Fairhaven, MA

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address: